

**Review of Agricultural Trade with Cuba:  
Threatening Rice Producers' Fastest  
Growing Market**

**Testimony of  
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**On behalf of  
U S Rice Producers Association  
and the  
USA Rice Federation**

**Before  
The Committee on Agriculture  
U.S House of Representatives**

**March 16, 2005**

## **INTRODUCTION**

Good morning Mr. Chairman and Members of the Committee. I am Dennis DeLaughter, a rice farmer from Edna, Texas. I am the past Chairman of the U.S. Rice Producers Association. I currently serve on the Association's International Trade Committee, and also serve on the Department of Agriculture's Agriculture Technical Advisory Committee on Trade. My testimony today has also been endorsed by the USA Rice Federation.

Thank you for holding this timely hearing to review the state of U.S. agricultural trade with Cuba. In only 3 years since U.S. rice exports to Cuba resumed in December of 2001, Cuba has grown to be among our top 5 largest single country export markets for U.S. rice. The February 22, 2005, announcement of new restrictions on that trade by the Treasury Department's Office of Foreign Assets Control (OFAC) threatens to disrupt our exports to Cuba and to degrade our reputation as a reliable supplier of grain to the world market – a reputation that Congress and U.S. farmers have been working steadfastly to rebuild and maintain since the embargo of U.S. agricultural exports to the Soviet Union in 1980.

## **CUBA: AMERICA'S LARGEST NATURAL RICE MARKET**

In 1951, Cuba was the destination for 252,878 metric tons of US rice, approximately \$52 million in sales that represented 51% of US rice exports at that time. Rice exports to Cuba during the period between 1951 and 1960 averaged approximately 169,000 metric tons, valued at \$37 million annually and accounting for 25% of all rice exports for the decade.<sup>1</sup> Following the overthrow of the Batista government in 1959, the U.S. unilateral embargo closed that market in 1960.

The US rice industry has grown tremendously in the past 40 years. US rice production is expected to fall slightly from last year to approximately 10.0 million metric tons in 2005. Approximately 45% of the US crop moves into export channels.

Today, Cuban demand for rice is approximately 600,000 tons of milled rice per year. The island's rice-growing area, with average production limited to approximately 200,000 tons, has ensured consistently strong import demand

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<sup>1</sup> A total of 1.7 MMT, based on US Department of Commerce estimates (SEE Attachment A).

over the last half of the 20<sup>th</sup> century. Until recently, Cuba has purchased approximately 400,000 tons of rice annually, mostly from China, Thailand and Vietnam. This quantity represented approximately \$100 million in annual trade that was occurring just off the US coast – but without US involvement or benefit.

In addition to shutting off exports to Cuba, export embargoes imposed unilaterally by our government represent one of the greatest impediments to the enhanced exports of U.S. rice. For example, the largest market for U.S. rice in the 1950s was Cuba, in the 1970s it was Iran, and in the 1980s it was Iraq. Rice farmers have known for decades what the U.S. Department of Agriculture concluded in 1997, that “Of all grains exported by the United States, rice has been particularly hard-hit by trade restrictions.”<sup>2</sup> The Department went on to note that such unilateral trade restrictions had put more than 13 percent of projected global rice import demand off-limits to U.S. farmers and exporters.

## **THE 2000 EXPORT ENHANCEMENT ACT REOPENS RICE TRADE WITH CUBA**

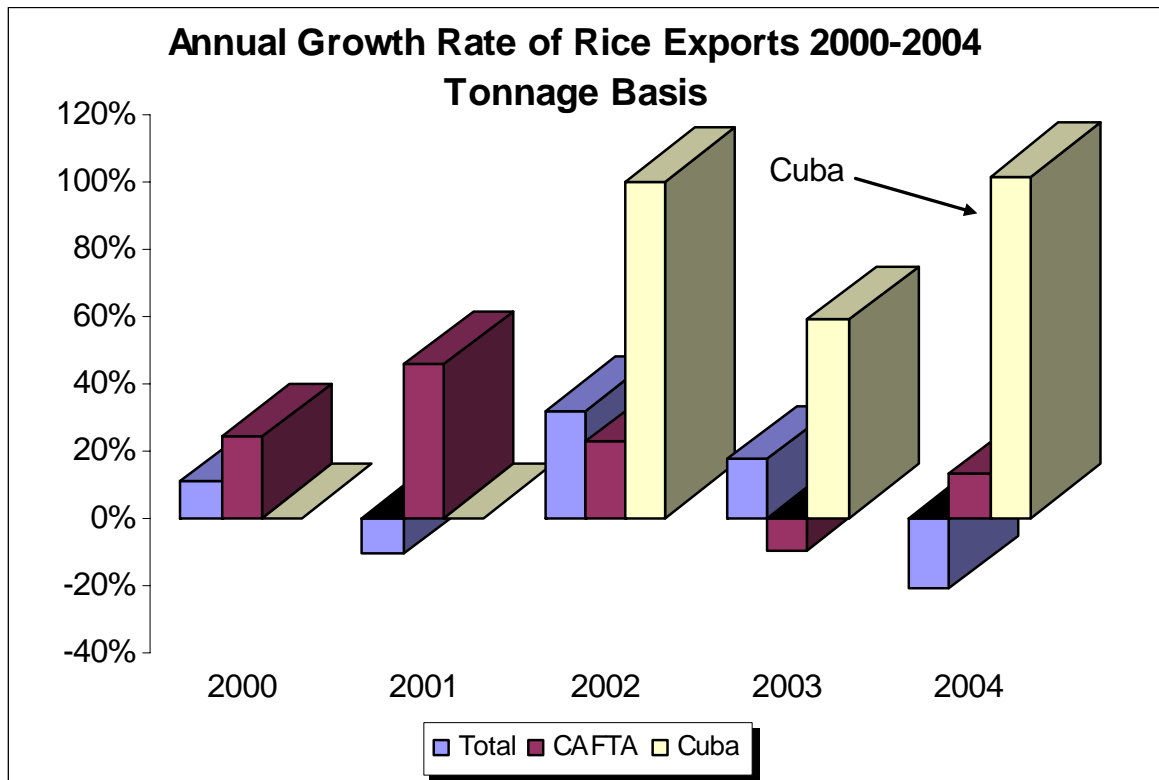
Thanks to the leadership of Senators John Ashcroft, Richard Lugar, and Byron Dorgan and Representatives George Nethercutt and Jo Ann Emerson, among many others, Congress provided for the resumption of trade with Cuba when it passed the Trade Sanctions Reform and Export Enhancement Act of 2000. The Act sought to achieve its goal of enhancing U.S. agricultural export opportunities by explicitly exempting sales of food and medicine from the exercise of any economic embargo. In order to prevent the extension of credit to Cuba by any U.S. entity, the Act limited the financing terms of sales to Cuba to either—

- (A) Payment of cash in advance; or
- (B) Financing by third country financial institutions (excluding United States persons or Government of Cuba entities), except that such financing may be confirmed or advised by a United States financial institution.

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<sup>2</sup> **A Review of U.S. Trade Restrictions and Grain Exports**, Foreign Agriculture Service, U.S. Department of Agriculture, [http://www.fas.usda.gov/grain/circular/1997/97-09/feature/trd\\_rstr.htm](http://www.fas.usda.gov/grain/circular/1997/97-09/feature/trd_rstr.htm) .

Cuba first made purchases of U.S. agricultural products under the new Export Enhancement Act authorities in December 2001. Since that time, Cuba has contracted to purchase approximately \$1.25 billion worth of U.S. agricultural goods. Approximately \$1 billion of agricultural goods have already been delivered and paid for. These purchases included shipments of nearly 320,000 tons of U.S. rice, worth a reported \$81 million. In 2004 the Cubans bought \$64 million worth of U.S. rice – more than their purchases of any other commodity. This established Cuba as our fastest growing market overall, and one of the top five customers for long grain rice.



The majority of this trade was conducted on a cash basis, pursuant to licenses issued by the Department of Commerce. Cuban purchasers generally paid promptly, and there has been no extension of credit to Cuba by US entities. Clearly, the bipartisan improvements made by Congress in the 2000 Act were working to enhance exports on a cash basis, as Congress had intended.

## OFAC's NEW TRADE RESTRICTIONS THREATEN U.S. EXPORTS

Beginning in November of 2004 OFAC began holding up payments to U.S. sellers doing business with Cuba, and reportedly began imposing new regulatory reviews and/or licensing requirements on U.S. sellers and their banks that slowed payments to U.S. sellers. In response to these new restrictions on trade, a long list of Members of Congress, including Chairman Goodlatte, wrote to the Department of the Treasury and other Executive branch agencies to express their concern regarding the imposition of new restrictions on trade with Cuba.

Despite these urgings from Congress, on February 22, 2005, OFAC issued a Final Rule revising the regulations governing the payment terms permitted for the sale of licensed agricultural products to Cuba (70 Fed. Reg. 9225; the "Final Rule"). The Final Rule was published without any prior notice to Congress or to the exporting community, nor was any opportunity afforded for comment on the Final Rule by the agricultural or exporting communities.

We are disappointed that in imposing this new restriction on exports to Cuba, OFAC has ignored the requirement in section 903 of the 2000 Export Enhancement Act that prohibits the President from imposing any new restriction or condition on commercial export sales of agricultural commodities unless the President submits a report to Congress regarding the restriction 60 days before its imposition, AND the Congress enacts a joint resolution approving the report.<sup>3</sup> It is difficult for rice farmers to agree with

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<sup>3</sup> Section 903(a) of the Export Enhancement Act (22 U.S.C 2207(a)) reads as follows:

"Sec. 903. Restriction.

"(a) New sanctions. Except as provided in sections 7203 and 7204 of this title and notwithstanding any other provision of law, the President may not impose a unilateral agricultural sanction or unilateral medical sanction against a foreign country or foreign entity, unless –

"(1) not later than 60 days before the sanction is proposed to be imposed, the President submits a report to Congress that –

"(A) describes the activity proposed to be prohibited, restricted, or conditioned; and

"(B) describes the actions by the foreign country or foreign entity that justify the sanction; and

"(2) there is enacted into law a joint resolution stating the approval of Congress for the report submitted under paragraph (1)."

Footnote 3, continues...

OFAC that the new “interpretation” is not a restriction or condition on trade when the interpretation calls into question the legality of more than \$1 billion in exports over more than 3 years, renders invalid \$250 million worth of open agricultural export contracts, and imposes new requirements to finances trades through banks in foreign countries.

Mr. Chairman, it is our understanding that the Department of Agriculture was active in interagency discussions prior to the announcement of the Final Rule. We appreciate the efforts of Members of Congress like you, as well as the efforts of USDA officials, who tried to warn of the many complications that such a rule will impose on U.S. exports. Unfortunately, the Final Rule will nonetheless have very negative impacts on pending sales, future sales, and the export prospects and livelihoods of U.S. farmers.

**CURRENT VALID CONTRACTS VOIDED:** At the time the Final Rule was announced, U.S. exporters had pending contracts for sales of approximately 950,000 metric tons of agricultural goods to Cuba worth a delivered value of approximately \$250 million. The contracts are with approximately 50 U.S. exporters from 30 different states, with the substantial majority of the sales for delivery after March 24, 2005. The agricultural goods include wheat, corn, rice, chicken, soy meal, soy oil, soybeans, peas, milk, shortening, mayonnaise, margarine, chocolate, crackers, canned evaporated milk, apples, cattle, animal feed, pork fat, port hams, lentils, chick peas, tomato paste, spices and other assorted consumer food products.<sup>4</sup> This included sales contracts for an estimated 50,000 tons of rice, valued at about \$ 15 million.

The performance of some of these contracts is scheduled to occur as late as December of this year. The Final Rule precludes U.S. exporters from performing these contracts pursuant to the contracts’ payment terms after March 24, 2005. After March 24, only contracts financed through third country financial institutions may go forward. Pending rice sales estimated at \$15 million, and hundreds of millions of dollars worth of other

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Footnote 3, continued...

Section 902(6) and 902(2)(E) of the Act make clear that the prohibited unilateral agricultural sanctions under section 903(a) include “any prohibition, restriction, or condition on carrying out” “any commercial export sale of agricultural commodities”.

<sup>4</sup> Information provided by Alimport on or about March 8, 2005.

agricultural products under open contracts would be rendered void by OFAC's Final Rule.

Losing the sale (unless the Cubans are gracious enough to renegotiate the contracts' payment terms) will expose exporters to the possibility of experiencing a loss on any hedge position that the exporter took at the time the contract was entered into. The eventual losers in this case will be the American farmers, as previously booked export sales are reversed, and the commodities that had been booked for export flow back onto the domestic market.

If Cuba does not insist on the original contract payment terms, the payment terms will need to be renegotiated, and the increased costs will almost inevitably be born by the U.S. exporter. In the future, the costs associated with such uncertainties in selling farm goods to Cuba will, again, reveal themselves in lower prices paid to U.S. farmers.

**U.S. AGRICULTURE'S REPUTATION DIMINISHED:** The Final Rule sends the wrong message to American agriculture's global trading partners. We understand that this is the first time since President Carter ordered an embargo of American grain for sale to the former Soviet Union in January 1980, that the United States has adopted regulations that preclude U.S. exporters from performing existing contracts for the sale of agricultural goods. Until the February 22 Final Rule, trade sanctions have generally allowed existing contracts to be completed. Protecting the sanctity of U.S. agricultural export sales contracts is essential for American agriculture to maintain and grow its export market share in an industry where one third of U.S. products must be exported. The February 22 Final Rule will inevitably raise questions around the world concerning the reliability of the U.S. as a supplier of agricultural goods, to the detriment of the U.S. agricultural industry and American farmers.

**FUTURE TRANSACTION COSTS INCREASED:** Unfortunately, OFAC's Final Rule effectively requiring the use of letters of credit through third country financial institutions will increase the transactional costs for U.S. agricultural sales. These costs will fall disproportionately on small exporters, many of whom will be run out of the market by the increased costs and complexities of the trade. The costs of these reduced sales will ultimately be borne by U.S. farmers.

## **IT IS NOT TOO LATE:**

If allowed to remain in place, OFAC's unilateral changes in the terms of these sales breach existing sales contracts, threaten opportunities for future sales, and brand U.S. agriculture as an unreliable supplier in world agricultural markets. But it is not too late to prevent or diminish these undesirable consequences, through any one of a number of avenues.

### **1. Reverse the OFAC February 22 Final Rule.**

All U.S. rice producers and millers agree with Chairman Goodlatte and the dozens of other Members of the House and Senate who expressed their opposition to the imposition of new restrictions and conditions on the cash sale of agricultural products to Cuba. We believe that the more than \$1 billion in sales to Cuba on a cash basis during the past 4 years have proven the wisdom of Congress and the resilience of our agriculture industry in beginning to recapture what was once our largest rice market. The most efficient, effective method to protect and enhance this market is for OFAC to reverse the Final Rule.

### **2. Honoring Existing Contracts.**

If the February 22 Final Rule is not reversed, OFAC should amend the Rule to allow contracts that were in place as of that date to be honored under their original payment and other terms. To fail to do so will establish a precedent of ignoring the importance of contract sanctity, to the detriment of the U.S. agriculture's reputation as a reliable international supplier for years to come.

### **3. Reiterating and Clarifying Existing Law.**

We urge Congress to enact legislation reiterating the intent of Congress that the payment of cash in advance under the 2000 Export Enhancement Act was indeed intended to enhance trade, not to restrict it. This issue is addressed in section 5 of H.R. 719, the Agricultural Export Facilitation Act of 2005, which was introduced by Congressman Moran of Kansas. We urge the swift enactment of legislation to reiterate the intent of Congress that exports financed by the payment of cash in advance be allowed to continue on the same basis that has been successfully used for \$1 billion in exports during the past 4 years.



#### **4. Insisting on Strict Future Compliance with Section 903.**

Congress should insist that OFAC and future Administrations respect the requirement in section 903 of the 2000 Export Enhancement Act that prohibits the imposition of new trade restrictions or conditions absent the prior notice to, and approval by Congress. If OFAC is permitted to invalidate contracts for more than \$250 million in exports by “interpreting” one term in the law after more than \$1 billion of successful trade under that law, rice producers are very concerned that there will be nothing to stop the total shut down of exports to Cuba by a similar “interpretation” of the Act’s third country bank financing provisions in the future.

#### **CONCLUSION: IRONY**

Mr. Chairman, it seems ironic to rice producers and millers that it is only the hoped for graciousness of Cuban buyers that will prevent the revocation of hundreds of millions of dollars in sales of rice and other farm goods to Cuba. It is our government that is restricting the trade, and we must rely on the Cubans to allow trade to go forward in spite of these restrictions.

We are particularly concerned that we risk losing a potential \$100 million market that is so close to our own shores. The loss of this market would be especially acute because there are so many other markets that are already unavailable to us because of tariff and nontariff barriers, or by other unilateral sanctions imposed by our own government.

One glance at a world atlas will tell you that the US rice industry in the Mississippi Delta and along the Gulf Coast have a tremendous transportation advantage over their Asian competitors in reaching the Cuban rice market. US rice farmers and millers have already begun to penetrate the Cuban rice market with high-quality rice that Cuban consumers prefer over cheaper Asian rice.

US rice farmers have been told that export markets are our markets of the future. When these markets are closed off, everyone in the industry is hurt, and farmers predictably pay the ultimate costs of lost markets from their own pockets. These are unnecessary costs that rice farmers should not be asked to pay, especially when pending budget proposals would reduce the farm safety net on which farmers depend here at home.

All we are asking is that the law be allowed to operate as Congress intended, and that the US industry have an opportunity to compete for this very promising market, without undue restriction from our own government.

I look forward to addressing any questions that you may have.

Thanks you.

**Attachment A**  
**Cuba's Share Of Total US Rice Exports, by volume and value, 1951-61<sup>\*</sup>**

Table 9. Cuba's share of total U.S. rice exports, by volume and value, 1951-61

Year	U.S. exports		Cuban imports from U.S.		Cuba's share <sup>a</sup>	
	Quant.	Value	Quant.	Value	Quant.	Value
	<u>Metric tn</u>	<u>million \$'s</u>	<u>metric tn</u>	<u>million \$'s</u>	-----%-----	
1951	493,498	94	252,878	52	51.2	55.3
1952	800,402	157	219,282	50	27.4	31.8
1953	707,332	154	253,786	50	35.9	32.5
1954	568,862	107	162,532	38	28.6	35.5
1955	454,454	81	96,702	21	21.3	25.9
1956	824,010	132	144,826	27	17.6	20.4
1957	740,928	124	187,048	40	25.2	32.3
1958	573,856	97	187,048	40	32.6	41.2
1959	690,080	105	171,612	36	24.9	34.2
1960	893,472	130	15,890	17	1.8	13.1
1961	806,758	106	b	b	b	b

<sup>a</sup> Calculated by the authors.

<sup>b</sup> Minimal amounts before the economic embargo was totally enforced.

Source: U.S. Department of Commerce (various issues).

<sup>\*</sup> Alvarez, J. and W. A. Messina, Jr., Cuba's Rice Industry: Potential Imports From Florida, International Working Paper 92-27, Food and Resource Economics Department, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, Florida, September 1992.